IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.10221 of 2007
RAM PYARI DEVI
Versus
STATE OF BIHAR & ANR
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4. 4.9.2008. Heard Mr. Ashwani Kumar Singh, the learned counsel for the petitioner and Mr. Jharkhandi Upadhayay, the learned A.P.P. for the State. Although O.P. No.2 was duly served with notice, he has chosen not to appear to contest this application.

The petitioner has prayed for the quashing of the order dated 7.11.2006 passed in Criminal Revision No.234 of 2005 by Sri B.D. Pathak, the learned First Additional Sessions Judge, Nalanda at Biharsharif as also the order dated 12.5.2005 passed by Sri B.K. Sah, the learned Executive Magistrate, Rajgir , in Case No.213 of 2002 in a proceeding under Section 145 Cr.P.C., whereby he has declared the possession over the lands in dispute in favour of Opposite Party No.2.

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The submission advanced by the learned counsel for the petitioner is that there is a patent illegality in the order dated 12.5.2005 since the case has not been closed officially and the witnesses remained to be examined and notwithstanding the same when the case was not even ready for hearing the learned Magistrate passed the final orders in gross violation of the procedural law and the learned Revisional Court had followed suit.

It would appear from perusal of the entire copy of the ordersheet which has been appended with the application that prior to 12.5.2005, when the impugned order was passed, the date in the case was fixed as 10.5.2005, and on 10.5.2005, the case was adjourned to

18.5.2005 and from order dated 18.5.2005 , it would transpire that on that date witness no.4 on behalf of O.P. No.2 was examined and on the request of the second party evidence on his behalf was closed and the case was adjourned to 25.5.2005(wrongly written as 25.5.2004) and on 25.5.2005, it was fixed for 4.6.2005(wrongly written as 4.5.2006) for arguments.

If the date 4.6.2005 had been fixed for arguments, it is difficult to understand how the learned Executive Magistrate passed the final orders on 12.5.2005. Apparently, the order appears to be a preconceived and procured order which cannot be sustained in law.

Unfortunately, O.P. No.2 as stated above, though duly served with notice, he has not cared to appear to contest the suit and there is no rebuttal of the submission advanced by the learned counsel for the petitioner.

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In the facts and the circumstances of the case and the discussions made above, the impugned orders of the courts below are hereby set aside and the case is remitted back to the learned Executive Magistrate, Rajgir for fresh decision after hearing both the parties.

The application is accordingly allowed with directions to the learned Executive Magistrate, Rajgir, as stated above.

(Abhijit Sinha,J)

P.S.